

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Stephen G. Burke

Case No. 96-cr-50-01-SM

Opinion No. 2024 DNH 045

Stephen G. Burke

v.

United States of America

Case No. 21-cv-863-SM

Opinion No. 2024 DNH 045

O R D E R


On March 8, 2023, the court appointed Lawrence Vogelmann as counsel to petitioner, Stephen G. Burke, in two related matters. Specifically, Attorney Vogelmann was appointed to assist Burke in filing a motion for compassionate relief (case no. 96-cr-50-SM-1), and obtaining relief under 28 U.S.C. § 2255 (case no. 21-CV-863-SM). Vogelmann accepted that appointment, and dutifully served as counsel in both matters. Both requests were ultimately denied. See Op. No. 2024 DNH 025; Op. No. 2024 DNH 018. Vogelmann now asks the court to clarify the status of his representation of Burke.

Counsel's representation of petitioner is complete, and no further action on his part is required.

Burke has filed notice that he seeks to appeal the denial of his petition for relief under 28 U.S.C. § 2255 in case number 21-CV-863-SM. See case no. 96-cr-50-SM-1, at document no. 1290. He also asks the court to appoint counsel to assist in that appeal. Id. at document no. 1291. But, Burke's petition was denied without prejudice for lack of jurisdiction, because Burke failed to obtain authorization from the Court of Appeals for the First Circuit before filing a successive § 2255 petition in the district court. See 28 U.S.C. § 2255(h) and 28 U.S.C. § 2244(b)(3)(A). Accordingly, no certificate of appealability was issued. See 28 U.S.C. § 2253(c)(2).

Petitioner is, of course, free to seek the First Circuit's permission to file his claim in a new § 2255 petition. For his convenience, the court has attached to this Order a copy of the First Circuit's application form for authorization to file a successive § 2255 motion. Petitioner's motion to appoint counsel (document no. 1291) is moot in light of the disposition herein.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

June 6, 2024

cc: Counsel of record